

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Property Tax

RONALD HOXIE,	)	
	)	
Plaintiff,	)	Nos. 981363 (Control)
	)	981364; 981365
v.	)	
	)	
CLATSOP COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appealed the real market and maximum assessed values assigned to his commercial medical and office building in Astoria, for the 1997-98 tax year. The property is identified in the Clatsop County Assessor's records as Account Numbers 8-9-8CC-01000, 8-9-8CC-01080, and 8-9-8CC-01081.

A trial was held in Astoria on February 17, 2000. Plaintiff was represented by Mr. Donn Bauske, Attorney at Law. Mr. Hoxie and his appraiser, Jackson S. Roholt, MAI, testified for plaintiff. Defendant was represented by Mr. Blair Henningsgaard, Assistant County Counsel. Testifying for defendant were Ms. L. Catherine Harper, Clatsop County Commercial Appraiser, and John Solheim, Commercial Appraiser.

**STATEMENT OF FACTS**

The subject property consists of two buildings and a parking lot occupying an entire city block in downtown Astoria across the street from the courthouse. One building was built in 1923 (800 Exchange) and the other in 1978 (820 Exchange). Both have been renovated. Plaintiff acquired the property in September, 1994 for \$500,000.

The building at 800 Exchange Street is a four-story office building with a

basement. It has approximately 4,000 square feet per floor (gross building area) and is served by an elevator and a stairway. Net rentable area for this building is approximately 13,144 square feet.

The building at 820 Exchange Street is a newer two-story brick structure, and occupied by PeaceHealth Medical Group and Astoria Pharmacy. It is referred to by the parties as the medical office building and has a net rentable area of approximately 13,058 square feet. The two buildings are situated on a 38,000 square foot lot (approximately) (.85 acres).

At the time of purchase, the entire property was identified in the county assessor's records as one tax lot (Lot 1000). Plaintiff and Clatsop County entered into two lease agreements in 1995 for the occupancy of the first and third floors of the 800 Exchange Street building. The leased premises were granted property tax exemptions effective for tax years 1996-97 and 1997-98 and were given separate tax lot numbers (Lots 1080 and 1081). Thus, for the year at issue there were three tax lots.

Plaintiff performed certain maintenance and made certain repairs and improvements to both buildings prior to July 1, 1995. Additional work was done on the 800 Exchange Street building between July 1, 1995, and July 1, 1997. This work affected all three tax accounts (Tax Lots 1000, 1080 and 1081) and cost approximately \$225,000. Plaintiff personally performed some of the work, buying the materials at local supply houses. It is the measurement of the value added by the remodeling done to the 800 Exchange Street building between July 1, 1995, and July 1, 1997, that forms the basis of this appeal.

The real market value for tax year 1994-95, as reduced by the board, is \$500,000 (down from \$691,360). Following the board's reduction for the 1994-95 tax

year, the assessor's office trended the value 16 percent to \$580,000 for the 1995-96 tax year. These values were for tax lot 1000. (Tax lots 1080 & 1081 did not yet exist.) The total RMV on the tax rolls as of July 1, 1997, (tax year 1997-98) is \$2,031,908, allocated as set out in the footnote below.<sup>1</sup> The parties essentially agree on a total real market value for the subject property of \$1.9M as of July 1, 1997.<sup>2</sup>

Plaintiff asserts that the total MAV for 1997-98 is \$736,620, with \$638,790 attributable to Tax Lot 1000. Defendant's figures are \$1,313,147 total MAV, with \$1,194,964 attributable to Tax Lot 1000.

**ISSUE**

The issue in this case is how to measure the added value attributable to plaintiff's property renovations (improvements) performed between July 1, 1995, and July 1, 1997, in order to establish the maximum assessed value (MAV) for tax year 1997-98.

**COURT'S ANALYSIS**

Measure 50, a voter approved initiative passed in May 1997, amended the Oregon constitution to require that the assessed value (AV) of property for the 1997-98 tax year be "rolled back" to a "maximum assessed value" (MAV) of 90 percent of the

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<sup>1</sup> Plaintiff again appealed the values for 1997-98 and the board reduced the RMV of Tax Lot 1000 from \$1,975,250 to \$1,777,570. (Ptf's Complaint for Case # 981363). According to the Board Orders submitted by plaintiff, the 1997-98 values are allocated as follows:

	RMV		MAV	
TL 1000	\$1,777,570	Land: \$316,250	Bld.: \$1,461,320	\$1,297,625
TL 1080	\$ 180,834	Land: \$ 43,214	Bld.: \$ 137,620	\$ 132,008
TL 1081	\$ 73,504	Land: \$ 17,574	Bld.: \$ 55,930	\$ 53,657

<sup>2</sup> Plaintiff asserts the value is \$1,857,000, based on Mr. Roholt's November 16, 1999, letter updating his earlier appraisal. (Ptf's Ex 2, at 1). Defendant estimates the total real market value to be \$1,904,000. (Def's Ex A, at i & 28). Another appraisal report written by Mr. Roholt for purposes of a refinancing loan estimates the value as of March 6, 1998, to be \$2,050,000. (Ptf's Ex 3, at 4).

property's real market value for the tax year beginning July 1, 1995, (1995-96).<sup>3</sup>

Certain changes to the property (designated "new property or new improvements" and encompassing new construction, reconstruction, remodeling, renovations, etc.) between July 1, 1995, and July 1, 1997, are added to the "base" MAV (90 % of the July 1, 1995, RMV) as a product of the RMV of the new improvements "multiplied by the ratio of the average maximum assessed value over the average real market value for the assessment year." Or Const, Art XI, § 11(1)(c), *codified as* ORS 308.146.<sup>4</sup> These changes are referred to by the taxing authorities as "exceptions value." The ratio is referred to as the "change property ratio" or CPR.

Both parties agree that the measure of exceptions value is the difference between the 1995 and 1997 RMV. They disagree on the 1995 RMV. Defendant insists that the decision of the Regular Division of the Tax Court in *Ellis v. Lorati*, 14 OTR 525 (1999) requires that the 1995 value come from the assessment and tax rolls. (Def's Trial Memorandum, at 2). Plaintiff disagrees and urges the court to accept the RMV

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<sup>3</sup> The pertinent portion of the constitutional amendment provides:

"(1)(a) For the tax year beginning July 1, 1997, each unit of property in this state shall have a maximum assessed value for ad valorem property tax purposes that does not exceed the property's real market value for the tax year beginning July 1, 1995, reduced by 10 percent. Or Const, Art XI, § 11; See also Or Laws 1997, ch 541, §3(1)(a), *compiled as a note after* ORS 308.146 (1997).

<sup>4</sup> With respect to property physically changed after July 1, 1995, the constitution provides:

"(c) Notwithstanding paragraph (a) or (b) of this subsection [relating to the calculation of MAV where property is unaltered between July 1, 1995, and July 1, 1997, and limiting the annual rise in MAV to 3 percent after 1997-98], property shall be valued at the ratio of average maximum assessed value to average real market value of property located in the area in which the property is located that is within the same property class, if on or after July 1, 1995:

"(A) The property is new property or new improvements to property." Or Const, Art XI, § 11(1).

established by the evidence, which his appraiser estimates is considerably higher than the roll value. The court concludes that *Lorati* is limited to calculation of the 1997-98 base MAV and is not controlling when determining exceptions value.

Measure 50 explicitly prohibits a reappraisal of the property for purposes of establishing the MAV. The court in *Lorati* held that "taxpayers appealing their July 1, 1997, MAV may not challenge the real market value shown on the tax roll for July 1, 1995". *Lorati*, 14 OTR at 534. The decision relied on paragraphs (a) and (g) of the constitution (Article XI, section 11(1)). Paragraph (a) establishes a MAV for each "unit of property" and requires that it be based on "the real market value for the tax year beginning July 1, 1995." Art. XI, § 11(1)(a)<sup>5</sup>. The court noted that the real market value "for the tax year beginning July 1, 1995" must refer to the value on the assessment and tax rolls. *Id.* at 530 (emphasis added). Paragraph (g) precludes a "reappraisal" of the real market value for the tax year beginning July 1, 1995, "for purposes of determining the property's maximum assessed value under paragraph (a)."<sup>6</sup> Read together, those provisions preclude a reappraisal of the July 1, 1995, RMV for purposes of determining the July 1, 1997, MAV.

That reasoning controls the calculation of the base MAV. However, here we are concerned with the value added to existing property by remodeling done between July 1, 1995, and July 1, 1997. This is the exceptions value and it is an appraisal question.

Exceptions value is governed by paragraph (c) of the constitution.<sup>7</sup> The

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<sup>5</sup> The text of paragraph (a) of Article XI, section 11(1) is set out in footnote (3).

<sup>6</sup> Paragraph (g) provides in full:

"There shall not be a reappraisal of the real market value used in the tax year beginning July 1, 1995, for purposes of determining the property's maximum assessed value under paragraph (a) of this subsection." Or Const, Art XI, § 11(1).

<sup>7</sup> Paragraph (c) is set out in footnote 4 above.

relevant statutory provision is ORS 308.153, which provides:

“(1) If new property is added to the assessment roll or improvements are made to property as of January 1 of the assessment year [July 1 in 1997], the maximum assessed value of the property shall be the sum of:

“(a) The maximum assessed value determined under ORS 308.146 [1995-96 real market value minus ten percent]; and

“(b) The product of the value of the new property or new improvements determined under subsection (2) of this section multiplied by the ratio of the average maximum assessed value over the average real market value for the assessment year.

“(2) The value of new property or new improvements shall equal the real market value of the new property or new improvements reduced (but not below zero) by the real market value of retirements from the property tax account.” ORS 308.153. (Emphasis added).

Thus, the statutory framework provides for calculation of a base MAV under paragraph (a) of subsection (1), for which there can be no reappraisal<sup>8</sup>, which is then added to the "real market value" of the new improvements (exceptions value) under subsection (2) of ORS 308.153. There is no limiting language here requiring the market value to be that "used in the tax year beginning July 1, 1995", as is found in paragraph (g) of the constitution.

The court believes that the statutory reference to real market value in subsection (2) presents an appraisal question and that the prohibition against a reappraisal contained in paragraph (g) of the constitution (Or Const, Art XI, § 11(1)) is inapplicable. Once the increase in value attributable to remodeling is determined, it is adjusted by the appropriate CPR and added to the base MAV. Thus, the 1995-96 RMV, for purposes of measuring the exceptions value, is an open question, to be established by

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<sup>8</sup> Because of subsection (1)(a) of the constitution, as interpreted in *Lorati*.

the evidence, independent of the value appearing on the tax roll for that year.

The next question is whether plaintiff can allocate the value between the two buildings in calculating the exceptions value. Since the only work done to the property as a unit (i.e., buildings) between July 1995 and July 1997 was to the office building (800 Exchange Street), plaintiff's approach to measuring the exceptions value focuses on that building only. Plaintiff values the 800 Exchange Street building in 1995 and 1997 and argues that the difference in value represents the value added by the work performed during that period, which involved an investment of roughly \$225,000. In doing so, plaintiff assigns much of the total RMV to the other building. Defendant argues that Judge Byers' decisions in *Taylor v. Clackamas County Assessor (I)*, 14 OTR 504 (1999) (Taylor I) and *Taylor v. Clackamas County Assessor (II)*, 14 OTR 581 (1999) (Taylor II) preclude any segregation of the account between the two buildings. The court agrees.

Taxpayers in *Taylor* lost one of two buildings to fire in December 1996. *Id.* at 506. The county calculated the July 1, 1997, MAV as 90 percent of the July 1, 1995, RMV, which included the building destroyed by fire before July 1, 1997. *Id.* The court in Taylor I upheld the assessor's calculation based on a determination that the term "unit of property" in the constitution (Article XI, section 11 (1) (a)) referred to assessable unit and that the improvements (buildings) are collectively an assessable unit for purposes of property assessment and taxation. *Taylor*, 14 OTR at 509. This interpretation precluded a redetermination of the 1995-96 RMV by removing the building destroyed in 1996 in calculating the 1997-98 MAV because the "unit of property" had to be taken as a whole (i.e., buildings). Accordingly, in calculating the 1997 MAV taxpayers were stuck with the 1995 RMV on the rolls, which included a building no longer in existence.

On reconsideration the court in Taylor II affirmed that unit of property meant

assessable unit and further held that plaintiffs could establish an overall AV by using the MAV for one assessable unit (land) and the RMV for the other (improvements). *Id.* at 586.<sup>9</sup> The Taylor II decision was based on the court's observation that "Measure 50 and ORS Chapter 308 must be viewed and construed together" because Measure 50 imposes a MAV and chapter 308 provides the methods for assessing property. *Taylor v. Clackamas County Assessor II*, 14 OTR 581, 585 (1999).

ORS 308.153 refers to "new property or new improvements to property." (Emphasis added). Plaintiff's improvements were to the assessable unit of property known as buildings. Given the court's decisions in Taylor I and II, the court here concludes that plaintiff cannot separate the value of the two buildings in calculating the exceptions value and MAV.

We turn now to measuring the added value. Typically the amount invested exceeds the value added. In this case plaintiff spent approximately \$225,000 and performed some of the work himself. Some of the work was done before July 1, 1995, and is not properly part of the "exceptions value." Complicating matters still more is the fact that plaintiff has a good reputation in the community as a landlord and his involvement alone appears to have increased the value of the property, although the financial impact was not quantified. The evidence shows that plaintiff attracted numerous tenants after he took over the property and began making the improvements. Plaintiff asserts that some of the increase in value is attributable to his reputation and argues he should not be "punished" because of his personality and management style. This, and the fact that plaintiff asserts he got a deal when he bought the property in late 1994 for \$500,000,

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<sup>9</sup> The assessor used the 1997 MAV (90% of the 1995 RMV - land and 2 buildings) as the AV because it was lower than the 1997 RMV (land and one building).



account, at least in part, for the wide disparity between the parties in estimating the exceptions value.

The gap between the parties in estimating the value added by the improvements is indeed great - nearly \$800,000. Plaintiff asserts the number is \$294,000 while defendant presents a figure of \$1,083,763.<sup>10</sup>

The evidence is extensive and not entirely consistent. There are three appraisal reports, two submitted by plaintiff that were done prior to the filing of the appeal (Ptf's Ex's 3 & 41), and one by defendant, prepared specifically for this appeal (Def's Ex A). In addition, plaintiff's appraiser, Mr. Roholt, who prepared one of the two reports submitted by plaintiff mentioned above, prepared two additional letter opinions of value in February and November 1999 (Ptf's Ex's 1 & 2).

Plaintiff places primary reliance on the latest of the two letter opinions, dated November 16, 1999. (Ptf's Ex 2). In that report Mr. Roholt estimated the exceptions value by separately analyzing the two buildings under the income approach.<sup>11</sup> The court has already ruled that existing case law (*Taylor I* and *Taylor II*) prohibits a segregation of the assessable unit referred to as improvements (i.e., the buildings) in establishing the

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<sup>10</sup> The actual difference comes to \$789,763.

<sup>11</sup> Mr. Roholt approached the task by estimating the RMV for each building as of July 1, 1997, under the income approach (\$759,000 for 800 Exchange St.; \$1,098,000 for 820 Exchange St.), applying the ratios derived therefrom (41% and 59%, respectively, for 800 & 820 Exchange) to 90 percent of the July 1, 1995, AV, to obtain the 1997 AV for the building at 820 Exchange Street. (The numbers are: \$580,000 (1995 RMV) x .9 = \$522,000 (base MAV); \$522,000 x .41 = \$214,020 = 1997 MAV for 800 Exchange; \$522,000 x .59 = \$307,980 = 1997 MAV for 820 Exchange.) (Ptf's Ex 2, at 1-4). He then estimated the July 1, 1995, RMV of the 800 Exchange Street building (\$465,336), subtracted that number from the July 1, 1997, RMV for that building, producing what Mr. Roholt contends is the value contribution of the work performed between July 1, 1995, and July 1, 1997. The conclusion is an increase in value of \$294,000 for an investment of \$225,265. (Ptf's Ex 2, at 6). By applying the appropriate CPR, Mr. Roholt concludes that the increase in the MAV for the 800 Exchange Street building is \$214,620. *Id.* Finally, the appraiser tallies all the numbers (MAV for 800 Exchange, increased MAV for improvements, MAV for 820 Exchange) and arrives at a total 1997 MAV of \$736,620.

exceptions RMV. Moreover, as defendant points out on page 6 of its Trial Memorandum, Mr. Roholt also determined that the 800 Exchange Street building represented 41 percent of total RMV for the property, which results in a total 1995-96 RMV of \$1,134,146, a number unsupported in the record.

Defendant, on the other hand, trended the 1995 building RMV on the tax rolls to July 1, 1997, and subtracted that number from the July 1, 1997, RMV, based on the premise that the trended 1995 value represents the value of the property in July 1997, absent the renovations. The difference, argues defendant, is attributable to the value added by the work done between July 1, 1995, and July 1, 1997. The court finds this approach close to hitting the mark in terms of ascertaining value, but feels certain adjustments are in order.

Reviewing the evidence, certain themes do emerge. First, the building RMV as of July 1, 1997, was \$1,533,500. Plaintiff's number is slightly higher, but the number comes from Mr. Roholt's March 1998 value estimate, which is some eight months after the assessment date. (Ptf's Ex 3, at 86 & 73). Second, there is support in the record for a land value (RMV) for the 1997-98 tax year of \$370,500<sup>12</sup>. (Ptf's Ex 3, at 72; Def's Ex A, at 34).

The key to solving the puzzle is to determine the July 1, 1995, RMV. Trending that number to July 1, 1997, and subtracting the 1997-98 land value, will establish the value attributable to plaintiff's remodel.

Mr. Herman, who originally appraised the property in August 1993, estimated the total RMV as of August 10, 1994, to be \$625,000, with \$359,000 allocated

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<sup>12</sup> The parties essentially agree on this number as evidenced in def's ex A and ptf's ex 3.

to the buildings.<sup>13</sup> Mr. Herman's update report is thorough and runs 30 pages in length. The county roll value at that time (tax year 1994-95) was \$691,360, with \$506,570 on the buildings. The court agrees with plaintiff when he says he got the property at a bargain price in November 1994 for \$500,000.

Plaintiff performed some of the work before July 1, 1995, but there is no evidence in the record to establish the impact on value. And, while any "good will" value added by Mr. Hoxie's connection to the property is not taxable under *Boise Cascade v. Dept. of Rev.*, 12 OTR 263 (1991), the court has no way of removing such value.

The court believes a reasonable market value for 1994-95 is \$660,000. Applying the county's 16 percent trend for 1995 produces a 1995-96 RMV of \$765,600. Carrying that number to the 1997-98 tax year, by utilizing the county's trend for 1996 (1.23), results in a trended value of \$941,700 (rounded) for the property exclusive of remodeling.<sup>14</sup> Subtracting the land value of \$370,500 results in a trended building value (without the remodeling) for tax year 1997-98 of \$571,200. Subtracting that number from the value of the buildings as remodeled, which the court found to be \$1,533,500 (1997-98 building RMV) results in an exceptions RMV of \$962,300. When the exceptions RMV is multiplied by the CPR of .73, and the product is added to the base MAV of \$522,000<sup>15</sup>, the total MAV of \$1,224,479 emerges.

The total MAV must then be allocated between the three accounts. The court believes that defendant's percentage recommendation is most appropriate. It produces

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<sup>13</sup> This figure is obtained by subtracting his land value estimate of \$266,000, set out on page 15, from his total value of \$625,000, set out on page 25. (Ptf's Ex 41).

<sup>14</sup> According to defendant's evidence, there was no adjustment, up or down, between 1996 and 1997.

<sup>15</sup> \$580,000 (1995-96 RMV) x .9 = \$522,000.

the following MAV breakdown:

<u>Tax Lot</u>	% of Total	RMV	MAV
1000	91%	\$1,732,640	\$1,114,275
1080	6%	\$ 114,240	\$ 73,470
1081	3%	\$ 57,120	\$ 36,734
	100%	\$1,904,000	\$1,224,479

### **CONCLUSION**

After a thorough review of the evidence, the court concludes that plaintiff's \$225,000 remodel effort increased the value of the property by \$962,300. This is indeed unusual, although plaintiff did personally perform some of the work himself. The value increase may include some good will value which by law is not subject to property tax in Oregon, but there is simply no evidence in the record from which to derive a number. The impact on plaintiff's tax liability for the 1997-98 tax year is set out in detail above. The total MAV for 1997-98 is \$1,224,479, allocated \$1,114,275 for Tax Lot 1000, \$73,470 for Tax lot 1080, and \$36,734 for Tax Lot 1081.

IT IS THE DECISION OF THE COURT that the value of the property identified in the Clatsop County's Assessor's records as Account Numbers 8-9-8CC-01000, 8-9-8CC-01080, and 8-9-8CC-01081, shall be as set out above.

IT IS FURTHER DECIDED THAT the county correct the assessment and tax rolls to reflect the above values. Any refund due following this correction is to be promptly paid with statutory interest pursuant to ORS 311.806 and 311.812.

Dated this \_\_\_\_\_ day of July, 2000.

DAN ROBINSON  
MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON JULY 24, 2000. THE COURT FILED THIS DOCUMENT ON JULY 24, 2000.**